75-1888

SUPREME COURT OF THE UNITED STATES

BRUBRAD COMPANY,

Petitioner

-against-

UNITED STATES POSTAL SERVICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The opinion of the Court of Appeals for the Second Circuit was delivered from the bench on April 2, 1976. It has not been officially reported, and is appended hereto. The opinion of the District Court for the Eastern District of New York was entered on November 6, 1975. It is officially reported at 404 F.Supp. 691, and is appended hereto.

Judgment Reviewed

The judgment sought to be reviewed was entered in the office of the Clerk of the Second Circuit Court of Appeals on April 2, 1976. No order respecting a rehearing or extending the time to file the within petition has been entered.

Jurisdiction

Certiorari jurisdiction from the Second Circuit Court of Appeals is conferred upon this Court pursuant to 28 United States Code 1254(1).

Questions Presented for Review

(1) Whether the United States of America, by devaluing the dollar, can legally and constitutionally alter the value of its own obligations under contracts.

(2) Whether 31 United States Code 463 is constitutional with respect to government obligations entered into after its date of enactment.

Statutes Involved

(The foregoing statutes are set forth in pertinent part in the appendix):

Public Laws 92-268; 93-110; 93-373
31 United States Code 311
31 United States Code 405
31 United States Code 408(b)
31 United States Code 411
31 United States Code 463(a)
39 United States Code 409
28 United States Code 1339

Statement of the Case

In 1964, plaintiff's and defendant's predecessors in interest[1] entered into a lease for a store in Brooklyn, New York to be used as a post

1. Plaintiff's predecessor was Brubrad Corporation. Defendant's predecessor was the United States of America.

office. The initial rent was $6,120 per year for ten years, with four five-year renewal periods, at the option of the post office, at rents of $5,700, $6,000, $6,300 and $6,600 per year respectively.

The rents in the lease were set forth in terms of "$" or "dollars" without further definition. At the time the lease was entered into, "dollars" either were silver certificates or federal reserve notes readily convertible into silver certificates. These silver certificates in turn were redeemable for specie silver dollars at a rate of $1.29 per ounce, as had been the case in 1964 for over thirty years.[2]

In 1967, Congress adopted 31 United States Code 405a-3 outlawing silver certificates as of June, 1968. Between that time and 1975 there was free circulation of silver but not gold 31 United States Code 411. The value of the dollar began declining with regard to silver, but kept its value with regard to gold until 1971.[2A]

2. Our currency has been officially bi-metallic since early this century. 31 United States Code 311. Therefore, it also was valued in terms of gold (in 1964 at $35.00 per ounce). However, since 1934, Americans had been forbidden to own gold except for very limited industrial purposes.

2A. Until 1975, the gold value of the dollar was theoretic for domestic purposes since Americans could not own it.

Beginning in 1971, the United States enacted several devaluations of the dollar. See, e.g., Public Laws 92-268 and 93-110 appended hereto. In 1974, Congress enacted Public Law 93-373 which, as of January 1, 1975, allowed unlimited ownership of gold, and allowed the value of the dollar to float in relation to both gold and silver.

The effect of these acts was the drastic devaluation of the dollar. In 1975, it cost about $168.00 to buy an ounce of gold (This since has declined to about $130.00) rather than the $35.00 official value in effect until 1971, and $4.20 to buy an ounce of silver, rather than the $1.29 it cost in 1964 and for the four-year period thereafter when silver could actually be obtained from the Treasury at that rate.

In 1974, the postal service exercised its first option to renew. At the beginning of 1975, petitioner asked that respondent agree to an increase in rent to compensate for the loss caused through the aforesaid devaluations. When this was refused, the within action was commenced.

The complaint seeks reformation of the lease so that the term "dollars" be read to refer to dollars as they were valued at the time the contract was entered into. The District Court agreed to give alternative consideration to the case as a declaratory judgment to determine whether the United States legally could, and effectively did, lower its rent payments by these devaluations.

After joinder of issue, both parties moved for summary judgment. In November of 1975, the District Court for the Eastern District of New York rendered a decision in favor of respondent dismissing the complaint. This was duly appealed to the Second Circuit Court of Appeals, which affirmed in April, 1976. The basis of both decisions is that 31 United States Code 463, which allows payment of obligations after devaluation on a "dollar for dollar" basis, applies to government obligations entered into after the date of enactment of that statute.

Jurisdiction Below

Federal Jurisdiction in the court of first instance was invoked under 39 United States Code 409.

Reasons Why the Writ Should be Granted

This Court should grant petitioner's application for a writ of certiorari because the decisions of the courts below, unless reversed, effectively nullify Perry v. United States, 294 U.S. 330 (1934) and the entire line of cases from Sinking Fund Cases, 99 U.S. 1 (1868) to Lynch v. United States, 292 U.S. 571 (1934) to Jones v. Lynn, 477 F.2d 885 (5th Cir. 1973) holding that the United States is held to its contractual obligations much as is any private party.

The circumstances of Perry, supra, are crucial to the case at bar. In 1933, a series of laws were enacted which (a) barred the ownership of gold or payment in gold; (b) devalued the dollar; (c) required debts to be discharged

"dollar for dollar, in any coin or currency which at the time of payment is legal tender." 31 United States Code 463.

At the time these laws were enacted, there were a number of obligations both of private companies and of the United States government outstanding that called for payment in gold dollars of a specific weight. One Mr. Norman held such a bond issued by the B & O Railroad, and Mr. Perry held such a bond issued by the United States. When these became due, both men demanded payment in the sum of gold that the bond called for rather than on a "dollar for dollar" basis. Both the railroad and the federal government refused to pay on the basis demanded, and so the lawsuits were commenced.

Both of these cases reached the United States Supreme Court in 1934. In Norman v. B. & O, Railroad, 294 U.S. 340, the Court held 31 United States Code 463 constitutional insofar as private debts were concerned, and therefore that those debts could be discharged on a "dollar for dollar" basis. It reasoned that neither party was in any way responsible for the devaluation, and both had taken equal risks with respect to future enactments of the soverign.

However, the Court found the case to be quite different where obligations of the soverign were concerned, and therefore where one party to the obligation was the same party who had enacted the devaluation. It held, in Perry, supra, that 31 United States Code 463 was unconstitutional as far as governmental obligations were concerned:

> The bond in suit differs from an obligation of private parties, or of States or municipalities, whose contracts are necessarily made in subjection to the dominant power of Congress (p.348)
>
> There is a clear distinction between the power of the Congress to control of interdict the contracts of private parties when they interfere with the exercise of its constitutional authority, and the power of the Congress to alter or repudiate the substance of its own engagements when it has borrowed money under the authority which the Constitution confers (pp.350-351)
>
> The question is necessarily presented whether the Joint Resolution of June 5, 1933 (48 Stat.113) is a valid enactment so far as it applies to the obligations of the United States....We conclude that the Joint Resolution of June 5, 1933 insofar as it attempted to override the obligation created by the bond in suit, went beyond the congressional power (p.349)

In effect the Supreme Court held that private citizens do not have to roll dice with the manufacturer. Its basis, going back to the Sinking Fund Cases of 1868, was that when the government enters into an obligation, it is bound to that obligation much as is any private party:

> Punctilious fulfillment of contractual obligations is essential to the maintenance of the credit of public as well as private debtors. No doubt

> there was in March, 1933 great need of economy. In the administration of all government business, economy has become urgent because of lessened revenues and the heavy obligations to be issued in the hope of relieving widespread distress. Congress was free to reduce gratuities deemed excessive. But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would not be the practice of economy but an act of repudiation (pp.352-3)

This directly correlates with the Court's holding in Lynch v. United States, supra, the same year

> Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. ....When the United States enters into contract relations, its rights and duties therein are governed by the law applicable to contracts between private individuals (p.579).

Although the Supreme Court thus distinguished between private and federal contractual obligations, nonetheless it did not actually give relief to Mr. Perry.[3] It denied him recovery on two bases:

3. This distinction between right of action and right to remedy was another important holding in Perry. See, e.g., Jenkins v. U.S., 86 F.2d 123 (5th Cir. 1936). This was ignored by the District Court in the within matter when it said that petitioner was seeking relief because of inflation. As is discussed below, inflation is crucial to the remedy, but not to the right of action.

(1) it upheld the government's right to bar specie circulation. Therefore, Mr. Perry could not demand payment in gold coin, and any provision referring to gold coin as a measure of payment was invalid because of impossibility of performance. Nortz v. U.S., 294 U.S. 317 (1934).
(2) because of the Depression, despite devaluation the actual value of the dollars paid to Mr. Perry in 1934 was greater than the actual value of the dollars he had loaned in 1919. Therefore, according to a 5-4 majority of the Court, Mr. Perry had not suffered any actual loss.

If either of the above findings are deemed relevant to the within action, they should be reversed because (1) there could have been payment in non-specie legal tender other than on a dollar for dollar basis; (2) the 1934 majority confused the value of the dollar with regard to gold with the value of the dollar in terms of the economy as a whole. Mr. Perry suffered a loss in terms of his bargain whether or not he could buy more groceries with the lesser sum.

However, neither of these matters are in fact relevant to the within case. To begin with, petitioner is not asking for payment in specie, but rather in currency as measured by a particular amount of specie[4]. Moreover, even were petitioner deemed to be demanding payment in specie or its equivalent, Perry still would not be relevant on this point

4. Since the beginning of this century, our currency has constantly been valued in terms of gold or silver as is virtually every currency in the world. 31 United States Code 311.

as since January 1, 1975, there has been free circulation of both gold and silver. Public Law 93-110.

> This case is not the same as if gold coin had remained in circulation Perry, supra, p. 355

Moreover, unlike the Depression in which Perry arose, there has been continuous inflation since 1964. Therefore, unlike Mr. Perry, petitioner has suffered actual as well as theoretic loss. Of course, currency devaluation has not been the only cause of this inflation.[5] However, any 75% devaluation necessarily is a major contributing force. For example, the oil price increases are generally considered to be a significant cause of our current inflationary trend. See District Court opinion appended hereto, A-10. However, while oil prices may have risen by some 400 percent since 1964 in terms of dollars, they have scarcely altered at all in terms of specie since current dollars buy only one-quarter the specie they bought in 1964.

Regardless of the cause, there in fact has been a continuous inflation since 1964, so that the rent being received is lower not only in terms of specie but in terms of actual purchasing power. The dollar has not declined in terms of gold and silver only: it buys less in terms of roof repairs, janitorial services and electric bulbs. Since municipal costs also

5. In Columbus Ry. v. City of Columbus, 249 U.S. 399 (1918), the Supreme Court held that no contract is entitled to readjustment purely because of inflation. It is questionable whether this doctrine still pertains as the government has become the major cause of economic fluctuation. Galbreath, Money (Houghton Mifflin 1975.) (later chapters)

have increased to reflect the devalued dollar, real estate taxes have skyrocketed. All of these increased costs are actually being borne by the within petitioner, unlike Mr. Perry whose costs had declined in the Depression. Petitioner set its rents on what it calculated would permit a reasonable return after expenses on its investment. As these expenses have increased dramatically, the return in actuality, as well as in theory, no longer is reasonable.

The Perry decision contains no discussion about 31 United States Code 463 as ex post facto. Its finding of unconstutionality was based upon the Fifth Amendment obligation of contract. However, both courts below read the Perry doctrine to apply only to contracts entered into prior to the enactment of 31 United States Code 463. Such a finding, if upheld, would mean that while the Constitution bars the United States from altering its contractual obligations, by simple legislative fiat, it could adopt a statute giving it such a right at some indefinite future time and in some indefinite future manner.[6] If such an interpretation is allowed to stand, not only does Perry become meaningless (as there are virtually no government contracts more than forty years old) but the entire obligation of contract doctrine sinks into oblivion.

If the United States may enact a statute allowing it to alter the value of its own payments at will, it may adopt a

6. There was no way that petitioner in 1964 could have known that Congress would enact a statute three years later devaluing the dollar, not to mention the subsequent devaluations.

statute allowing it to alter any other provision of its obligations at some unspecified future time and in some unspecified future manner. Apart from wreaking havoc in the law of contracts, this would exacerbate the already-diminished confidence in our government who then would be a manufacturer of dice who is allowed to load them when and as it deems fit and with whom we are forced to gamble. As Alexander Hamilton stated, "It is in theory impossible to reconcile the idea of a promise which obliges with a power to make a law which can vary the effect of it" Perry, p. 380.

The briefs of the government below, as well as the opinion of the District Court, make much ado of the alleged enormous expense to which it would be put if plaintiff (and presumably others similarly situated, although such relief is not requested herein) is given relief. Of course, the cost of doing something constitutionally can never serve as an excuse for doing it another way. Moreover, the most that could happen would be that the United States would have to pay to the injured parties and show as a Treasury expense the amount it showed as a miscellaneous receipt pursuant to 31 United States Code 408(b) when it devalued the dollar. The 1971 approximate ten percent devaluation resulted in such a receipt of approximately two billion dollars. 2 Cong. News 1971, p. 2215. Thus the maximum possible cost, given the approximate 70 percent devaluation, would be under fifteen billion dollars. While not an insignificant sum, even were it all paid in one year, it would amount to less than four percent of the annual budget.

measured by a specific quantity of specie, it cannot at some later date by it own fiat alter that contract to be paid in the same amount of "dollars" measured by a lesser quantity of specie.[8] This is what Perry says, and nothing in law or morality permits a different finding.

This matter should be reviewed by the Supreme Court not only because the decisions of the courts below conflict with Perry but also because those decisions, if allowed to stand, attack the integrity of the government of the United States of America.

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June 21, 1976

8. Contrary to the Circuit Court's finding, petitioner is not seeking payment in 1964 Silver Certificates which are, of course, no longer printed. He is seeking payment in current currency but at the same value that silver certificates had in 1964.

In fact, however, the cost would not be near this sum. Many government contracts are cost-plus or have cost-of-living increases built in, and in those contracts most and in many instances all of the devaluation loss has already been compensated. According to the 1974 Statistical Abstract of the United States, the average outstanding government debt lasts 3.2 years, and a good portion of that debt is between government agencies. See pages 234 et seq. No debt incurred since January 1, 1975 when we officially adopted a floating currency, would be affected, and any debt incurred since 1971 when the first devaluation occurred would be affected only to a lesser extent.

Moreover, if the Court adheres to Perry and bases damages[7] upon inflation rather than devaluation, the effect of granting relief would be no more than giving cost-of-living increases to those government contractors who have not already received them.

Plaintiff is not arguing that the United States government cannot revalue its currency or bar the ownership of specie. Nor at this point is plaintiff arguing for reversal of the Columbus Railway doctrine.[8] Its sole contention is that when the United States becomes a party to a contract in which payment is set forth in dollars which then were

7. All that is before this Court is whether petitioner has a cause of action. While this Court if it wishes can offer guidance as to how damages upon remand should be calculated, all it need do at this time, even if it adheres to Perry, is find that the petitioner has in fact been damaged.

OPINION OF THE SECOND CIRCUIT COURT OF APPEALS

(Caption) New York, N.Y.
April 2, 1976

Chief Judge Kaufman: We will affirm

We find that the appellant's claims are precluded by 31 U.S.C. 463(a). That section forbids contracts which "give the obligee a right to require payment in gold or a particular kind of coin or currency." The appellant's claim falls within the purview of this section. He is seeking a "particular kind of ... currency"--that is, 1964 silver certificates, pegged to the value of gold and silver.

The holding in Perry v. United States, 294 U.S. 330 (1935), does not alter this conclusion. Perry forbade the application of §463(a) to government obligations issued before that section was enacted. The appellant's lease was made 30 years after 463(a) was passed.

OPINION OF THE DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

(Caption) November 6,1975

JUDD, J.

MEMORANDUM AND ORDER

Cross motions have been made for summary judgment by the plaintiff and to dismiss by the defendant.

Facts

On November 4, 1964, plaintiff's predecessor, Brubrad Corporation, and the United States of America entered into a lease agreement for a store at 2934-6 Avenue X, Brooklyn, New York to be used by the then Post Office Department. The lease was for an initial period of ten years at a rate of $510 per month, with four five-year renewals at the option of the defendant-tenant, at the rates of $475, $500, $525, and $550 per month, respectively. Plaintiff is a partnership.

The terms of the lease were reached after a process of public bidding and negotiation. The original bid submitted by Brubrad Corporation was for $545 per month, the lowest of three bids, but was accepted only after further negotiations which reduced the rent to $510.

Plaintiff's complaint asserts that since 1964 "the enormous rates of inflation and consequent declining value of the dollar" have been both unprecedented and uncontemplated by the parties. Plaintiff maintains that these economic developments have caused an "unfair hardship upon plaintiff" while unjustly

enriching the defendant.

In affidavits supporting its motion for summary judgment, plaintiff asserts that the inflation and declining value of the dollar have been caused, at least in part, by the affirmative acts of the federal government in pursuing its fiscal and monetary policies.

The complaint asks for judgment reforming the terms of the lease so that the rentals shall "be demeed to read as being in terms of 1964 dollars to be adjusted at the 1974 renewal period and each subsequent renewal period in accordance with the alteration in the value of the dollar from base year 1964...." In its briefs and oral argument, however, plaintiff retreats from the claim of reformation of the lease and asserts instead a right to have the lease interpreted so as to make an adjustment for inflation.

Plaintiff suggests various standards by which the court may make such an adjustment. Plaintiff first points out that the redemption of silver certificates for silver bullion was terminated on June 24, 1968, 31 U.S.C. §405a-3, and that the value of silver has increased from $1.29 per ounce to $4.58 per ounce since the lease was executed. In its memorandum of law, it includes tables to show that $510 a month is worth only about $120 in terms of gold, and that wholesale prices have risen more than 50% and construction costs more than 90% since 1967. On oral argument, counsel said that plaintiff was asking for damages from the date of the complaint at a rate of not more than $800 per month, but gave no explanation of how the $800 was computed.

In its supplemental brief, plaintiff claims the right to damages based on the decrease in buying power of the dollar.

In the motion papers, plaintiff asked simply "that a hearing be conducted to determine the precise method of adjustment."

Discussion

Defendant's motion to dismiss under F.R.C.P. 12(c) may be granted only if the complaint fails to state a claim upon which relief could be granted under any legal theory. Mitchell v. Hart, 41 F.R.D.138 (S.D.N.Y. 1966).

The court concludes that the complaint must be dismissed, whether viewed as an action for reformation of the contract or as a suit for a declaratory judgment construing the contract.

Reformation

The law of contracts permits the reformation of the express terms of a contract when the agreement between the parties is not accurately reflected in the express language of the contract, either through mutual mistake of the parties or fraud by one and mistake by the other. A.L.I, 2 Restatement, Contracts §504; 3 Corbin, Contracts §§608, 614 (1960); 13 Williston, Contracts, 3d ec., §§ 1547-49. Reformation is intended only to enforce the objectives of the parties "according to their original agreement." Mutual of Omaha Ins. Co. v. Russell, 402 F.2d 339, 344 (10th Cir. 1968), cert. denied, 394 U.S. 973, 89 S.Ct. 1456 (1969)

Such is not the case here. Plaintiff has not suggested that the parties intended the words of the contract to be other than what they are. Nor does plaintiff's theory of the case rest on the notion that the parties reached an express agreement other than that reflected in the written contract.

The Supreme Court has held, moreover, that inflation is not a ground for escape from contract terms. Columbus Ry. Power & Light Co. v. City of Columbus, 249 U.S. 399, 39 S.Ct.349, 354 (1919).

Change of Rent by Interpretation

Plaintiff's attempt to change its complaint from one for reformation to one for change of rent by interpretation of the contract is equally lacking in merit.

While plaintiff does not contend that the parties entered into an agreement on terms other than those in the lease, it argues that the meaning of those terms is different from the construction urged by the defendant. Plaintiff urges that the meaning of the phrase "annual rental of Six thousand one hundred twenty ... Dollars" in the 1964 ten-year lease meant that the rent should have a value each year (or at least in each renewal term) equivalent to the value of $6,120 in 1964. On the basis of plaintiff's contention at one point that the value of the dollar has declined by 75 percent or more since 1964, its construction of the lease would mean that the 1974 rental would exceed $24,000, or $2,000 per month, far in excess of the claim it made on the oral argument.

Plaintiff's contention might be disposed of summarily by simply stating that the meaning of the words used in the ten-year lease is so plain as to preclude any other interpretation. Such an approach is often adopted by courts in interpreting statutes as well as contracts. See, e.g., Western Union Tel. Co. v. American Communications Ass'n, 299 N.Y. 177 (1949); Bethlehem Steel Co. v. Turner Construction Co., 2 N.Y.2d 456, 161 N.Y.S.2d 90 (1957); Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 194 (1917).

There are occasions, however, where it is appropriate to go beyond the plain meaning of words in order to determine the underlying purpose of a statute or a contract. 3 Corbin, Contracts, §542 (1960); 9 Wigmore, Evidence, §2461 (3d ed.); Massachusetts Bonding Ins. Co. v. United States, 352 U.S. 128, 138, 77 S.Ct. 186, 191 (1956) (Frankfurter, J., dissenting); Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944)(L.Hand, J., concurring).

The court in construing a provision of a contract should look to the contract in its entirety. In this regard, it is significant that the parties varied the rentals for the four five-year option periods following the initial ten-year lease. Presumably, these negotiated rentals looking to the future included the parties' estimation of the value of the lease, and of the dollar at those times. Given the conventional meaning of the term "dollar" as our basic unit of currency, it would seem fair to assume that, had the parties meant to set the rent in terms of "1964 dollars," they would have used words other than those they chose.

When construing a contract, the court may properly consider the circumstances of the parties at the time of negotiation and entering into the contract. Here there is no indication that the predecessors of plaintiff and defendant dealt in any fashion other than the proverbial "arm's length," While subsequent developments both in this country and abroad may have proved plaintiff's contract to be an unwise one, such misjudgment of the future, standing alone, does not justify altering the terms of the contract.This court does not understand plaintiff to contend, nor could it find, that this contract was unconscionable when made. Cf., U.C.C. §2-302; Jones v. Star Credit Corp., 59 Misc.2d 189, 298 N.Y.S.2d 264 (S.Ct.Nassau County, 1969).

Plaintiff cites 31 U.S.C. §311, which states the policy of the United States, "to continue the use of both gold and silver as standard money...." This section, however, has not been in force as to gold since 1934, when gold coins were withdrawn from circulation, 31 U.S.C. §315b, and all inconsistent statutes were repealed. 31 U.S.C. §446. As to silver coins, Section 311 has had no validity since the redemption of silver certificates was terminated in 1968. 31 U.S.C. §405a-3.

The application of Section 311 to satisfaction of contract obligations is inconsistent in any event with 31 U.S.C. §463, enacted in 1933, forty years after Section 311.

Section 463 reads:

"(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law." (Emphasis added).

Should this court accept plaintiff's proferred construction, it would in effect be giving the plaintiff the "right to require payment in ... a particular kind or coin or currency, or in an amount of money of the United States measured thereby,...." To adopt such a construction would violate public policy as declared by Congress.

Section 463 was applied in Avery v. J.L.Hudson Co., 17 Mich.App.491, 169 N.W.2d 666 (Ct.of Apps. 1969). In that case, the landlord sued for the adjusted rent on a 99-year lease.

Plaintiff's reliance upon Perry v. United States, 294 U.S. 330, 55 S.Ct.432 (1935), is unavailing. In Perry, the Court recognized that Congress could not after the fact repudiate a binding obligation previously entered into by it, to pay principal and interest on government bonds "in United States gold coin of the present standard of value." In the present case, the statute invalidating provisions such as that advanced by plaintiff was on the books long before the lease was signed. Plaintiff would distinguish the Perry case because in that case there had been no decrease in the dollar's purchasing power, and therefore no damages; but the loss in purchasing power since 1964 in this case creates no rights in plaintiff, in the light of the policy set forth in 31 U.S.C. §463. Even if policies of the federal government have caused the current inflationary increase in prices, the policies were the result of Congress' exercise of its legislative powers under Article I, Section VIII of the Constitution, and give rise to no private rights.

It is also proper to consider the impact which acceptance of plaintiff's contentions would have on many other long-term government obligations. The New York Times of November 4, 1975 lists eleven series of United States government bonds with maturities from 1980 to 1998 and coupons from 3 percent to 4-1/4 percent. Their holders might make the same argument as plaintiff, that they did not contemplate the present inflation when the bonds were issued. Plaintiff, like bondholders and other creditors of the government, is entitled under 31 U.S.C. §463 only to "payment, dollar for dollar, in ... legal tender."

Cases cited by plaintiff about consideration of inflation in fixing damages for torts have no bearing on the amount of defendant's lease obligations.

The burdens of inflation do not rest alone on holders of long-term government obligations. Inflation has the effect of a capital levy on owners of many forms of property, and of an ungraduated income tax on all persons living on fixed incomes. Sorting out how much of inflation is attributable to deficit budgets to finance essential federal programs, how much results from oil price increases by OPEC countries, how much from uncontrolled collective bargaining agreements, and how much from other domestic and international causes, would be a fearsome task. A court should not, without Congressional guidance, single out a particular landlord or other victim of inflation to be compensated at the expense of all the other taxpayers in the United States.

For all of the foregoing reasons, it is

ORDERED that the plaintiff's motion for summary judgment be denied, the defendant's motion to dismiss the complaint be granted, and the Clerk of Court enter judgment for the defendant.

s/
U.S.D.J.

31 United States Code: Coins and Coinage

§311. Policy of the United States as to Bimetallism.

It is declared to be the policy of the United States to continue the use of both gold and silver as standard money ....And it is further declared that the efforts of the Government should be steadily directed to the establishment of such a safe system of bimetallism as will maintain at all times the equal power of every dollar coined or issued by the United States, in the markets and in the payment of debts.
November 1, 1893.

§405. Silver certificates; issuance for silver dollars

Any holder of silver dollars...may deposit the same with the Treasurer or any depositary of the United States designated for that purpose in sums not less than $10, and receive therefor certificates....The coin deposited for or representing certificates shall be retained in the Treasury for the payment of the same on demand....

§405a-1. Disposition of United States silver by coinage or sale; minimum sale price; stockpiled silver.

The Secretary of the Treasury is authorized to use for coinage, or to sell on such terms and conditions as he may deem appropriate, any silver of the United States...at a price not less than the monetary value of $1.29292929292 per fine troy ounce

405a-3. Limitation on exchange of silver certificates for silver; redemption from moneys in Treasury.

Silver certificates shall be exchangeable for silver bullion for one year following June 24, 1967. Thereafter, they shall no longer be redeemable in silver but shall be redeemable from any moneys in the general fund of the Treasury not otherwise appropriated.

405b. Gold certificates; issuance authorized.

The Secretary of the Treasury is authorized to issue gold certificates in such form and in such denominations as as he may determine, against any gold held by the Treasurer of the United States. The amount of gold certificates issued and outstanding shall at no time exceed the value, at the legal standard, of the gold so held against gold certificates.

408b. Increase or decrease in weight of gold dollar; adjustment of reserve.

In the event that the weight of the gold dollar shall at any time be reduced, the resulting increase in the value of the gold held by the United States... shall be covered into the Treasury as a miscellaneous receipt....

§411. Cancellation of Treasury notes on coinage of silver dollars and issue of silver certificates (Repealed March 18, 1968)

Treasury notes whenever received into the Treasury ...shall be retired and cancelled with standard silver dollars

...and upon the cancellation of Treasury notes silver certificates shall be issued against the silver dollars so coined.

463.

(See A-8 for text)

Jurisdictional Statutes

39 United States Code: Postal Service

409. Suits by and against the Postal Service.

(a) Except as provided in section 3628 of this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service.
...

28 United States Code: Jurisdiction

§1339. Postal matters.

The district court shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

Public Laws

Public Law 92-268

Section 1. This Act may be cited as the "Par Value Modification Act"
Sec.2. The Secretary of the Treasury is hereby authorized and directed to take the steps necessary to establish a new par value of the dollar of $1 equals one thirty-eight of a fine troy ounce of gold.

When established such par value shall be the legal standard for defining the relationship of the dollar to gold for the purpose of issuing gold certificates pursuant to §14(c) of the Gold Reserve Act of 1934 (31 U.S.C. 405(b))....
SEC.4. The increase in the value of gold held by the United States...resulting from the change in the par value of the dollar authorized by seetion 2 of this Act shall be covered into the Treasury as a miscellaneous receipt.
Approved March 31, 1972.

Public Law 93-110

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 2 of the Par Value Modification Act is amended by striking out the words "one thirty-eighth of a fine troy ounce of gold" and inserting in lieu thereof the fo following: "0.828948 Special Drawing Right, or, the equivalent in terms of gold, of forty-two and nine-tenths d dollars per fine troy ounce of gold".
...
SEC.3(a) Sections 3 and 4 of the Gold Reserve Act of 1934 (31 U.S.C. 442 and 443) are repealed.
(b)No provision of any law in effect on the date of enactment of this Act, and no rule, regulation or order under authority of such law, may be construed to prohibit any person from purchasing, holding, selling, or otherwise dealing with gold.
....
Approved September 21, 1973.

Public Law 93-373
...
Section 2. Subsections 3(b) and (c) of Public Law 93-110 (87 Stat. 352) are repealed and in lieu thereof add the following:
"(b) No provision of any law in effect on the date of enactment of this Act, and no rule, regulation, or order in effect on the date subsections (a) and (b) become effective may be construed to prohibit any person from purchasing, holding, selling or otherwise dealing with gold in the United States or abroad.
"(c) The provisions of subsections (a) and (b) of this section shall take effect on December 31, 1974 or at any time prior to such date that the President finds...."
Approved August 14, 1974.

No. 75-1888

In the Supreme Court of the United States

OCTOBER TERM, 1976

BRUBRAD COMPANY, PETITIONER

v.

UNITED STATES POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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In this action the owner of property in Brooklyn, New York, sought to have its lease agreement with the United States Postal Service[1] reformed or interpreted so as to provide for an adjustment of the amount of rental payments reflecting devaluation and inflation from the base year of 1964, when the lease was entered. The lease was for an initial period of 10 years at a rate of $510 per month, with four five-year renewals at the option of the Postal Service, at the rates of $475, $500, $525, and $550 per month, respectively (Pet. App. A-2). As the district court noted, the complaint seeks reformation of the lease, but in its briefs and oral argument the plaintiff asserted instead a right simply to have the lease interpreted as

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[1]The owner-lessor, Brubrad Company, a partnership, and the United States Postal Service are the successors in interest to Brubrad Corporation and the United States, respectively, who originally entered the lease.

already reflecting an intention to permit adjustment (Pet. App. A-3).[2]

In a Memorandum and Order, dated November 6, 1975, the district court held that the complaint, whether viewed as an action for reformation or as a suit for a declaratory judgment construing the contract, should be dismissed (Pet. App. A-2 to A-10). The court of appeals affirmed on April 2, 1976, in a brief opinion delivered from the bench (Pet. App. A-1).

The district court correctly found that the parties to the lease had dealt at "arm's length" and that the lease was not unconscionable when made (Pet. App. A-7). The court pointed out that although the lease agreement may have proven to be an unwise one for petitioner, that alone did not justify altering its terms (*ibid.*). More important, the court found that the parties' agreement to vary the amount of the monthly rental payment for the four five-year option periods following the initial 10-year lease (Pet. App. A-6) was designed to accommodate the parties' estimation of the dollar value of the lease at those future times (*ibid.*).[3] Consequently, the court correctly concluded that the construction of the lease agreement sought by the petitioner, even if it were a legally permissible one, did not conform with the parties' intention and was not required by law.

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[2]Recognizing that *Columbus Ry.* v. *City of Columbus*, 249 U.S. 399, precludes such a readjustment regarding inflation, petitioner stated in the district court that the gravamen of its complaint is devaluation. Inflation was relevant to obtaining relief, it asserted, since *Perry* v. *United States*, 294 U.S. 330, had denied recovery due to devaluation where deflation had cancelled the loss (Affirmation in Opposition to Cross-Motion to Dismiss, pp. 2, 3).

[3]Petitioner's argument (Pet. 13) that many government contracts contain cost-plus or cost-of-living provisions serves only to emphasize that the petitioner willingly entered a contract that dealt with this problem in a different fashion (*i.e.*, specific rental increases), which it now asserts was inadequate.

Beyond that, however, construction of the lease in the manner petitioner suggests is prohibited by law. In the exercise of its power under the Constitution to regulate the value of money, see Article I, Section 8, Clause 5, Congress proscribed contractual provisions granting a right to an amount of money measured in gold or a particular kind of coin or currency. Joint Resolution of June 5, 1933, 48 Stat. 113, 31 U.S.C. 463(a) (quoted at Pet. App. A-8). Both the district court and the court of appeals correctly relied on this section as a basis for decision (Pet. App. A-1, A-7).

Petitioner asserts (Pet. 5-11), however, that one of the gold clause cases, *Perry* v. *United States*, 294 U.S. 330, prohibits the application of Section 463(a) to the contractual relationship involved here. But *Perry* found Section 463(a) unconstitutional only in regard to contracts entered into prior to its enactment. The Court concluded in *Perry* (294 U.S. at 354, emphasis added)

> * * * that the Joint Resolution of June 5, 1933, *in so far as it attempted to override the obligation created by the bond in suit*, went beyond the congressional power.

The lease in this case was entered over 30 years after the enactment of Section 463(a).[4] Petitioner's argument that the principle of *Perry* should be applied to subsequent obligations of the government (Pet. 11-14) ignores the fact that prospective application of Section 463(a) does not result in the repudiation of an obligation. Rather, under circumstances such as those involved in this case, the statute serves as notice to persons entering contracts with the government that the interpretation of their obligations in the manner sought by the petitioner here is against public policy. The parties to such an agreement may seek to

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[4]Section 463(a) applies to obligations "in gold or a particular kind of coin or currency, or *in an amount of money of the United States measured thereby*" (emphasis added).

compensate for potential devaluation and inflation by providing for an adjustment in the contract price, as the parties have done in this case. But one who has chosen this alternative may not thereafter complain that the bargain fairly struck was nevertheless unwise.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

AUGUST 1976.

DOJ-1976-08